

JUDGE WOODS

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Mark D. Knoll
Member

March 24, 2015

The Honorable Kimba M. Wood
United States District Court for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, New York 10007

15 CV 2210

Re: Civ. Case No.
*Fidelity Brokerage Services LLC and National Financial Services LLC v.
The Financial Industry Regulatory Authority, Peter Deutsch and William
Deutsch*
REQUEST FOR ORDER TO SHOW CAUSE AND ORDER TO SEAL

Dear Judge Wood:

We represent Fidelity Brokerage Services LLC and National Financial Services LLC (collectively, "Plaintiffs") in the above captioned action.

Background

This action involves a Complaint for Declaratory Judgment under the Bank Secrecy Act, 31 U.S.C. § 5318(g) (“BSA”) related to documents withheld and testimonial privileges asserted during the course of a pending arbitration before the Financial Industry Regulatory Authority (“FINRA”) captioned *Peter and William Deutsch v. Fidelity Brokerage Services LLC and National Financial Services LLC*, FINRA Arbitration No. 12-02759 (the “Arbitration”). Plaintiffs have been ordered by the Arbitration Panel to seek judicial review of their assertion that a limited number of documents and certain testimonial objections have been properly made under the BSA as the information sought may disclose or tend to disclose whether or not a suspicious activity report, or SAR, had been filed in connection with the events at issue in the Arbitration.

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As set forth in the accompanying Memorandum of Law in Support of Plaintiffs' Order to Show Cause, the Plaintiffs' declaratory judgment action seeks an expedited hearing and an *In Camera* Review of documents withheld, and testimonial objections asserted, under the Bank Secrecy Act, 31 U.S.C. §5318(g), in the course of the Arbitration.

Request to File Documents Under Seal

We also write to request permission that the documents and materials associated with the requested motion (including related memoranda of law and accompanying declarations), be filed under seal. Plaintiffs submit that sealing is appropriate given the sensitivity of, and statutory prohibitions against, the disclosure of materials which would tend to disclose the existence or non-existence of a SAR. See 31 U.S.C. § 5318(g)(2)(A)(i) and 31 C.F.R. § 1023.320. The practice of filing such requests for in camera reviews under seal is a recognized one in this District. See, e.g., Strauss v. Credit Lyonnais, S.A., No. 06 Civ. 702, 2011 U.S. Dist. LEXIS 122694, 2011 WL 4736359, at *5 (E.D.N.Y. Oct. 6, 2011) (confidential bank documents allowed to be filed under seal for the purposes of summary judgment briefing); Dubai Islamic Bank v. Citibank, N.A., 2001 U.S. Dist. LEXIS 18525, 99 Civ. 1930 (RMB)(documents submitted for *in camera* review filed under seal). [initials]

By copy of this letter (by electronic mail, with consent), Plaintiffs are also providing notice of the Complaint, Order to Show Cause, and related documents to Defendants (i) Peter and William Deutsch (Claimants in the underlying action) through their Counsel, David Graff, Esq., and Howard Graff, Esq., and (ii) FINRA, through the designated Case Administration Manager, Arthur Baumgartner, and FINRA's counsel, Terri Reicher, Esq.

SO ORDERED, N.Y., N.Y.

Kimba M. Wood

**KIMBA M. WOOD
U.S.D.J.**

Part I

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The Honorable Kimba M. Wood

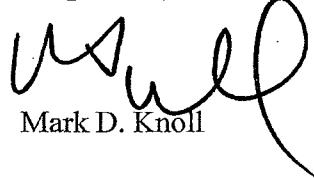
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This matter was the subject of a recent Miscellaneous Petition filed by Plaintiffs on March 13, 2015, Misc. Case No. 15-misc.-69. After considering the procedural posture of the initial Petition, Judge Caproni issued an Order dated March 17, 2015, stating that the matter could not proceed as a miscellaneous petition. The Plaintiffs have filed the instant civil action to satisfy the court's procedural concerns.¹

Respectfully submitted,


Mark D. Knoll

Cc: Howard Graff, Esq. (by Electronic Mail)
David Graff, Esq. (by Electronic Mail)
Arthur Baumgartner, FINRA (by Electronic Mail)
Terri Reicher, Esq. (FINRA, by Electronic Mail)

¹ The Court stated that an "ex parte" petition was not the "procedurally proper way to obtain the relief they are seeking." To be clear, Plaintiffs filed their Petition seeking an order scheduling a hearing and in-camera review of the subject materials. The petition provided that Claimants in the Arbitration and FINRA would both be provided with notice and an opportunity to be heard in connection with the hearing.